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DEPARTMENT OF STATE

ASSISTANT SECRETARY
EUR

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FEB 21 1959

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To: G - Mr. Murphy *by*
From: EUR - Livingston T. Merchant *LS*
Subject: German Alerts

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I am summarizing below the recent developments with respect to the problem of Alerts in Germany:

1. The Federal German Government does not possess the necessary legislative powers to implement certain of the measures contemplated in the NATO Alert System. (You will recall that the Alert System encompasses at various stages such matters as control of communications, diversion of shipping, control of refugees, etc.) To secure these powers would necessitate passage of the necessary legislation by the Bundestag with a two-thirds majority. You will appreciate the political sensitivity of these questions in Germany.

2. The Three Powers (United States, United Kingdom and France) do possess the necessary legal authority pending the securing of such authority by the Germans. Their possession of this authority does not, however, solve the problem of implementation of these measures, which is obviously dependent upon the cooperation of the German Government.

3. As an interim solution, in view of continued German reluctance to take the necessary legislative action, the Three Powers proposed to the Germans two years ago that procedures be worked out whereby the German Government would serve as the agent of the Three Powers in carrying out the necessary alert measures. This proposal was rejected by the Germans on legal grounds; i.e., it was contended that the German Government could not, in its capacity as agent, perform acts unconstitutional to it in its own capacity.

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4. This matter has remained in this unsatisfactory position for some two years. From time to time, together or separately, the Three Powers have urged the Germans to take the necessary steps; i.e., draft legislation, implementing orders, etc., so that at a critical period they could act in accordance with the requirements of the military Alert System. General Norstad has, of course, been very much worried by this serious gap in the NATO Alert System. Reportedly, certain German Ministers believe that the

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present is propitious for the introduction of this legislation because of the Berlin crisis; it has even been alleged that the SPD has expressed a willingness to concur in as much of the legislation as is necessary for NATO purposes. The Chancellor, however, is said to be most reluctant.

5. Ambassador Bruce has suggested a demarche to the Chancellor, asking him either to push on with the necessary legislation, or to advance some interim solution, possibly along the lines suggested by the Three Powers. We consider these excellent suggestions and have authorized the Ambassador to proceed.

6. At the same time we have concurred in the calling of a conference by SHAPE of representatives of the Three Powers and Germany, provided the Germans concur. (The British, French and ourselves are already agreeable to such a meeting.) The main purpose of this conference would be to ascertain the status of the details of the implementing legislation, which the Germans undertook to discuss a year and a half ago, and to urge the earliest possible conclusion of this work, which will be required whether legislation or an interim solution is adopted. At the same time, if the Germans remain adamant on the subject of an interim solution, this conference will at least provide an opportunity to explore in the fullest possible detail what procedures can be worked out and how we should move now in order that a possible crisis later in the spring will not find us in the position of not having recognized and attempted to move on this important question.

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7. We are, however, relatively confident that we shall better ourselves somewhat by a demarche to the Chancellor, which may impress upon him the importance of not letting this matter continue, and by a conference of this nature in which we hope to use SACEUR's military prestige to assist in pushing the Germans towards the necessary actions.

Concurrences:

RA - Mr. Timmons *B.R.*

GER - Mr. Lampson

L/EUR - Mr. Kearney

RA JM.

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